THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO. 35827 OF 1997

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DATED: 19.09.2007

Between:

M/s.Khoday R.C.A. Industries Limited.

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PETITIONER

AND

Govt. of A.P. rep. By its Principal Secretary, Revenue Dept., Secretariat, Hyderabad & others.

...RESPONDENTS

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 35827 OF 1997

ORDER:

Seeking to have the proceedings, in G.O.Rt. No. 2249 dated 09.12.1997 issued by the first respondent dismissing the revision filed by the petitioner challenging the orders of the second respondent dated 23.06.1995 rejecting their request for revalidation of the transport permit, declared as illegal, arbitrary and bereft of reasons, this writ petition is filed. The petitioner seeks a consequential direction to revalidate their permit and drop all further proceedings pursuant to G.O.Rt. No. 2249 dated 09.12.1997.

Facts, in brief, are that the petitioner, a limited company with its registered office at Bangalore, is carrying on business in the manufacture and sale of Indian made Foreign Liquor all over the country. The petitioner obtained a transport permit, under Rule 18(4)(i) of A.P. Indian Liquor and Foreign Liquor Rules, 1970, vide proceedings dated 15.03.1995 valid upto 22.03.1995, for transporting 600 cases of Hercules XXX Rum from their premises at Bangalore to Distilleries Company Limited, Itanagar, Arunachal Pradesh. As the consignment was not ready for export, the petitioner had its through transport permit revalidated upto 08.04.1995. The consignment was loaded in Lorry bearing No. AP 16 U 838 which entered the State of Andhra Pradesh at

Palamaneru check post on 07.04.1995. The Prohibition and Excise officials at the entry check-post made an endorsement on the reverse of the permit of the vehicle's entry into the State. Petitioner would contend that, after leaving the entry check-post, the Lorry developed mechanical troubles and was taken to a workshop on 07.04.1995, that the driver had promptly informed the Station House Officer, Poothalpet police station, Chittoor District and that the Station House Officer had certified that the lorry was under repair from 07.04.1995 to 09.04.1995 within the concerned Police Station limits. Petitioner would submit that, after repairs, the lorry, carrying the consignment, proceeded towards Vijayawada on 10.04.1995 and reached there on 11.04.1995, that, during the entire journey towards Vijayawada, the vehicle was giving frequent troubles, that it completely broke down at Vijayawada, that the driver had no option but to keep the vehicle at Vijayawada where it underwent major repairs and was made ready only on 20.04.1995. It is stated that as the driver was illiterate he did not obtain an endorsement to that effect from the Station House Officer, Vijayawada Police Station as he was under the impression that the endorsement made by the Station House Officer, Poothalpet police station would suffice. Petitioner would submit that when the driver approached the exit check post, at Purushothampuram in Srikakularm District, Excise officials had seized the vehicle along with the consignment on finding that the validity of the permit had expired on 08.04.1995 and that it had not been revalidated. Petitioner would submit that they made a representation to the second respondent seeking release of the seized vehicle along with the consignment, upon revalidating the through Transport permit, to enable the consignment to pass through the State of Andhra Pradesh. Petitioner would contend that the second respondent, without taking into consideration the circumstances aforementioned, had held that the consignment

could not pass through the State and had refused either to revalidate the permit or to release the seized vehicle and had passed an order to this effect on 23.06.1995. Aggrieved thereby, the petitioner filed a revision before the Government under Section 64 of the A.P. Excise Act and sought a direction to release the lorry and the consignment. As no orders were passed the petitioner filed W.P. No. 14403 of 1995 seeking release of the vehicle. The Writ Petition was disposed of on 11.07.1995 at the admission stage, with a direction that the consignment with the vehicle be released on a bank guarantee being furnished for Rs.2,00,000/- towards the vehicle and Rs.2,40,000/- for the consignment and that the revision filed before the Government be disposed of within one month. Petitioner would contend that they had approached the Superintendent, along with the bank guarantee, for release of the goods and that the third respondent had informed them that, since the vehicle had already been released and the driver had taken the original papers, the through transport permit, weigh bill etc., with him, the consignment could not be released as the original papers were not produced. The petitioner filed W.P. No. 6419 of 1996 seeking release of the consignment on production of xerox copies of the originals and this Court, by order dated 03.04.1996, directed the authorities to issue duplicate copies and release the consignment on the basis of the said documents. Thereafter, on the petitioner furnishing bank guarantees, the consignment was released. Petitioner would contend that, in the revision filed by them before the first respondent, they had specifically stated that the permit was required to be revalidated as the vehicle had broken down and could not pass through the State within the time of the Permit, that they had no intention to deviate from any of the provisions of the Act and the Rules and that the consignment had not been utilized within the State. They also stated that the entire stock was intact,

that not even a single bottle was utilized or sold and, as the agreement was for supply of the said entire liquor to Distillery Company Ltd., Itanagar, Arunachal Pradesh, there was no intentional violation of any of the other provisions of the Act and the Rules. Petitioner contended that the permit ought to have been re-validated and the vehicle permitted to pass through the State. According to the petitioner the Government, without application of mind, and, vide G.O.Rt. No. 2249 dated 09.12.1995, had dismissed the revision holding that they had failed to observe the provisions of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 and A.P. Through Transport Permit Rules and that the bank guarantee of Rs.4.40 lakhs would be appropriated. Petitioner would contend that the Through Transport Permit should have been revalidated as they had not contravened any of the provisions of the Act and the Rules, as the liquor was neither released nor supplied within the State, as the entire consignment was intact at the exit point and as the petitioner had sought revalidation of the permit immediately after the consignment was seized at the exit point by Excise officials. The action of the first respondent, in dismissing the statutory revision, is questioned mainly on the ground of non-application of mind and as bereft of reasons.

In the counter-affidavit, filed on behalf of respondents 1 to 3, it is stated that the petitioner was issued through transport permit dated 15.03.1995 for transportation of 600 cases of IML from Bangalore to Itangar, Arunachal Pradesh with validity upto 22.02.1995, that subsequently, the validity of the permit was extended upto 08.04.1995 on the request of the petitioner, that, despite knowing fully well that the consignment could not cross the State of Andhra Pradesh within two days, the petitioner had loaded the consignment on 07.04.1995, that as the vehicle had developed mechanical trouble after its entry at Palamaner the driver had

reported to the Puthalpet Police Station and had obtained a certificate to the effect that the lorry was under repair upto 09.04.1995, and even though the petitioner's validity had expired, the vehicle was taken upto Vijawada on 11.04.1995 where it underwent some repairs. According to the respondent, the petitioner had failed to report at Tirupathi and Ongole Prohibition and Excise Stations before it reached at Vijayawada and that they had also failed to report at Eluru and Visakhapatnam Prohibition and Excise stations before reaching the exit check post at Purushothampuram and that, moving without a valid permit within the State of Andhra Pradesh, violated the conditions of Through Transport permit. Respondents would contend that the petitioner had violated clauses (iii) and (viii) of Rule 11 of the A.P. Through Transport Permit Rules, that the petitioner did not approach the second respondent for revalidation of the permit on his own and had sought revalidation only after an objection was raised by the check post authorities and only after the vehicle and the stocks were seized. They would state that the consignment was moved from 09.04.1995 to 23.04.1995, even after the expiry of the validity period of the Through Transport Permit, from Puthalpet, Chittoor District to Purushothampuram of Srikakulam District in violation of the provisions of the Rules and the Act and that, on the representation made by the petitioner for revalidation of the through transport permit, the issue was examined with reference to the rules and conditions of the Through transport permit. It is stated that the petitioner's request for revalidating the through transport permit was rejected by the second respondent as they had contravened Rule 11 of the A.P. Through Transport Permit Rules, that in compliance with the orders of this Court in W.P. No. 14403 of 1995 dated 11.07.1995, and on production of a bank guarantee for Rs.4.40 lakhs, the consignment was released and

the mere fact that not even a single bottle was sold enroute, and the consignment was intact when it reached the exit check post, would not entitle the petitioner to have his through transport permit revalidated as there was violation of the Rules and as the consignment had moved in the State of Andhra Pradesh without a valid permit from 09.04.1995 to 23.04.1995. It is further stated that the first respondent, after giving the petitioner ample opportunity to represent his case through oral and written arguments and after going through the connected records, had finally dismissed the revision petition.

Sri M. Rama Rao, learned Counsel for the petitioner, would submit that the vehicle was seized at Purushothampuram check post on 23.04.1995 and that the driver had informed the petitioner's office at Bangalore on the same day and, soon thereafter, they had sought revalidation of the through transport permit on 06.06.1995 which was rejected on 23.06.1995. Learned Counsel would submit that only after furnishing a bank guarantee for Rs.2,00,000/- for the vehicle and Rs.2,40,000/- for the consignment was the lorry released on 03.04.1996. Learned Counsel would refer to the impugned order dated 09.12.1997 to contend that, since it is non-speaking, it is liable to be quashed. Learned Counsel would also rely on a Full Bench judgment of this Court in **V. Narayana Rao Vs. State of A.P.**[1] in support of his submission that, since the entire consignment was found intact and not a single bottle of XXX Rum was sold within the State of Andhra Pradesh, the petitioner cannot be said to have the *mens rea* for committing the offence. Learned Counsel would submit that as *mens rea* is an essential ingredient its absence would entitle the petitioner to have the through transport permit revalidated.

Learned Government Pleader for Prohibition and Excise would rely on the statutory provisions in this regard in support of

his submission that revalidation of the through transport permit could be made only on compliance with the conditions prescribed under the Act, the Rules and the Forms prescribed thereunder. Learned Government Pleader would submit that the Order in revision would indicate proper application of mind, since the petitioner failed to comply with the statutory requirements, they were not entitled for revalidation of the through transport permit, that the Full Bench Judgment in **V. Narayana Rao**[1] related to the proceedings for confiscation and as the respondents had merely issued notice for confiscation, under Section 46(A) of the Excise Act vide proceedings dated 14.07.1995, and had not yet taken any action thereafter, in view of the pendency of writ proceedings, the question whether the petitioner had the *mens rea,* necessary to commit the offence, was required to be examined later in the confiscation proceedings and not prior thereto. Learned Government Pleader would submit that the judgment of this Court in **V. Narayana Rao**[1] could not be relied upon to seek revalidation of the through transport permit which had already expired.

Before examining the rival contentions, it is necessary to note the relevant statutory provisions in this regard. Section 11 of the A.P. Excise Act, 1968 (Act 17 of 1968) relates to regulation of transport of intoxicants and, under sub-section (1) thereof, the Government, by notification, is empowered to prohibit or regulate the transport of an intoxicant, from any area into any other area within the State or from any place outside the State to any other place outside it through the intervening area lying within the State, except under a permit issued under Section 12. Section 12 relates to permits for transport of intoxicants and, under sub-section (1) thereof, any officer not below the rank of an Assistant Prohibition and Excise Superintendent, authorised by the Commissioner, is empowered to issue a permit for transport of intoxicants and,

under sub-section (3)(b), every permit under this section shall specify the period for and the route through which the permit shall be valid. Section 34, of Chapter VII of the Act, deals with penalties for illegal import, etc. Under Clause (a) thereunder whoever, in contravention of the Act or of any rule, notification or order made, issued or passed thereunder or of any licence or permit granted or issued under this Act, transports any intoxicant shall, on conviction, be punished in accordance with sub-sections (1) and (2) thereunder. Section 41 relates to penalty for offences not otherwise provided for and, thereunder, whoever does any act, in contravention of any of the provisions of this Act, or any rule, notification or order made, issued or passed thereunder and not otherwise provided for in this Act shall, on conviction, be punished with imprisonment which may extend upto six months and with fine which may extend upto rupees five thousand. Section 45 relates to the liability of certain things liable for confiscation and, thereunder, if any offence has been committed, which is punishable under the Act, and, under sub-section (2) thereunder, whenever any offence has been committed, which is punishable under the Act, any intoxicant which is being transported is liable for confiscation under clause (1). Section 46 relates to confiscation by Prohibition and Excise Officers in certain cases and, under subsection (1) thereof, where anything liable for confiscation under Section 45 is seized under the provisions of the Act, the officer seizing and detaining such property shall, without unreasonable delay, produce the seized property before the Deputy Commissioner of Prohibition and Excise and, under sub-section (2), on production of the seized property, the Deputy Commissioner of Prohibition and Excise, if he is satisfied that an offence under the Act has been committed, may, whether or not a prosecution is instituted for the commission of such an offence, order confiscation of such property. Section 46-A relates to issue

of show cause notice and, thereunder, no order of confiscation of any property under Section 46 shall be passed unless the person from whom the said property is seized (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; and (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice. Section 53 relates to the power to arrest without warrant, to seize articles liable for confiscation and to make searches and, under sub-section (1) thereof, any officer of the government employed in the Prohibition and Excise, Police or Revenue Department of the State, subject to such restrictions as may be prescribed, and any other person duly empowered to arrest without warrant, arrest any person, seize and detain any excisable or other article which he has reason to believe to be liable for confiscation under the Act. As is clear from Section 46(2), confiscation proceedings are independent of prosecution being instituted for commission of offence and can be instituted even if no prosecution is instituted for commission of an offence under the Act.

In exercise of the powers conferred by Section 72, the A.P. (Indian Liquor and Foreign Liquor) Rules, 1970 were made. Rule 17 thereof relates to application for transport permit and, under sub-section 3(a), applications for through transport permits shall be made to the Commissioner of Excise, A.P. in Form I I.L. 7(B). Rule 18 relates to issue of permit and, under clause (4)(1), in the case of a through transport permit of Indian Liquor, Foreign Liquor and beer, the Commissioner of Excise, after making such enquiry as he may consider necessary, and on being satisfied that the movement of the liquor is not in contravention of any law for the time being in force and that it will not be unloaded within the State of A.P, shall issue a permit for transport of liquor, through the State of Andhra Pradesh, in Form I.L. 8(A). The original of such a

permit shall be retained as an office copy, the duplicate, triplicate and quadruplicate copies shall be made over to the applicant and the transporter required to surrender the triplicate and quadruplicate to the concerned authority at the check posts of entry and exit respectively in the State of A.P. and obtain an endorsement in the duplicate copy to that effect. Under sub-clause (ii) non-compliance of the provisions of clause (1), or the conditions laid down in the through transport permit, shall disqualify the transporter for grant of through transport permit in future and the transporter is also liable for penalty under the provisions of the Act. Form I.L.8(A) is the permit for through transport. Clause 11 thereunder, which relates to the period of the validity of permit, carries the “from” and the “to” date. The permit granted is subject to the conditions mentioned thereunder. Clause (iv) requires movement of the consignment not be deviated from the route specified in the permit. Clause (vi) provides that the duplicate through transport Permit, duly filled in and stamped at the entry and exit check posts, shall be produced before the Commissioner within ten days of expiry of the validity of the permit or while applying for a subsequent through transport permit whichever is later. Under Clause (vii), the consignment shall exit within 120 hours of its entry into the State of Andhra Pradesh or the validity period of the permit, whichever is earlier. Clause (viii) provides that any break down of the transport vehicle, during journey in the State of Andhra Pradesh, shall be reported immediately to the local Excise Officer and that an endorsement to that effect shall be obtained on the duplicate permit.

While the petitioner had initially informed, Poothalpet Excise Police Station, Chittoor District, on 07.04.1995, regarding break down of the transport vehicle during its journey in Andhra Pradesh, and had obtained an endorsement to that effect on the duplicate permit, the alleged subsequent break down after 10.04.1995 was

neither reported at the local excise police stations nor was any endorsement obtained on the duplicate copy of permit. While the validity period, of the through transport permit, expired on 09.04.1995 the vehicle remained within the State of Andhra Pradesh till it reached the exit check post at Purushothampuram P.S. in Srikakulam District on 23.04.1995 without any valid permit for plying the vehicle within the State of Andhra Pradesh. It is only on the vehicle, and its contents, being seized by the Purushothampuram Excise Police Station on 23.04.1995 did the petitioner, that too more than a month thereafter on 06.06.1995, seek revalidation of the through transport permit, though there was an excise police station at Tirupathi enroute from Poothalpet to Vijayawada and there were Excise Police Stations at Eluru and Visakhapatnam when the vehicle is said to have been plied between Vijayawada and Purushothampuram. It is not in dispute that the petitioner did not inform any of the Excise officials enroute between the entry point at Poothalpet Excise Police Station in Chittoor District and Purushothampuram Excise Police Station in Srikakulam District which was the exit point in the State of Andhra Pradesh. The petitioner has, therefore, violated the conditions stipulated in the transport permit in Form I.L. 8(A) prescribed in Rule 18(4) (1) of the Indian Liquor and Foreign Liquor Rules, 1970.

As stated above, under Section 41, whoever does any act in contravention of any of the provisions of the A.P. Excise Act, or any rule, notification or order made, issued or passed thereunder, and not otherwise provided for in this Act, shall, on conviction, be liable for punishment of imprisonment which may extend upto six months and with fine which may extend upto Rupees five thousand. Under Section 45, whenever an offence has been committed, which is punishable under the Act, the intoxicant being transported is liable for confiscation. As such for violation of Rule

18(4)(1) read with Form I.L.8(A) both the transport vehicle, and the intoxicants being transported therein, are liable to be seized under Section 46(1) and action instituted for confiscation. The Full Bench judgment of this Court in **V. Narayana Rao**[1] related to a case where confiscation of the vehicle was ordered and, on the revision petition having been dismissed, the jurisdiction of this Court, under Article 226 of the Constitution of India was invoked. It is in this context that the Full Bench of this Court observed:

> "……..It is not in dispute that the liquor is duty paid and they are supported by all necessary documents except TTP which is a mere technicality and hence we are of the opinion that there is no mala fide intention on the part of the petitioner to consciously or deliberately violate any regulation. As rightly contended by the learned counsel for the petitioner, the petitioner was totally unaware of the necessity to obtain any TTP and his ignorance ought to have been considered before passing the extreme order of confiscation. The authorities have also not noticed that it was nobody's case that the petitioner was trying to do business by indulging in illegal means and therefore mere failure to obtain TTP does not indicate any mala fide intention on the part of the petitioner. The extreme order of confiscation, in our opinion, is not warranted in this case and in our opinion it is grossly disproportionate. The law providing for confiscation is an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefor are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of mens rea is also an essential ingredient and plays a vital role in such matters. Though these contentions were specifically raised before the authorities, the same have not been considered at all in proper perspective……..
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> ……..In our opinion the authorities ought to have considered the provisions of the Excise act in proper perspective. There is no mens rea to commit the offence on the part of the petitioner which is one of the relevant considerations before ordering confiscation and seizure of the vehicle. In the instant case we hold that mens rea is totally absent. Therefore, there cannot be an order of confiscation of the goods or the vehicle……..

In the present case, while the petitioner had been asked to show cause, why the cases of IML seized should not be confiscated, no orders of confiscation has as yet been passed. Section 46-A requires an opportunity of representation being given to the petitioner to show cause as to why the property seized

should not be confiscated. It is always open to the petitioner to raise all such pleas, as are available to them in law, including placing reliance on the Full bench judgment of this Court in **V. Narayana Rao**[1], and to contend that they had no criminal intent or *mens rea* to commit the offence, in reply to the show cause notice issued to them by the respondent dated 14.07.2005.

As confiscation proceedings are said to be still pending, the question which remains to be considered is whether the petitioner is entitled for revalidation of the through transport permit after seizure of the vehicle and its contents and whether the statutory revision preferred by them against the order rejecting their request for revalidation of the through transport is liable to be quashed on the ground that the order is bereft of reasons.

A perusal of the order, in G.O.Rt. No.2249, dated 09.12.1997, would show that the government had taken note of all the earlier facts culminating in the order of the second respondent dated 23.06.1995. Thereafter the government, while holding that the petitioner had failed to observe the provisions of the A.P. Indian Liquor and Foreign Liquor Rules, 1970 and the A.P. through transport permit Rules and that his request for release of the bank guarantee of Rs.4.40 lakhs, furnished to the Superintendent of Prohibition and Excise, Srikakulam, was rejected in terms of the provisions of the Andhra Pradesh Excise Act, dismissed the revision petition and directed the second respondent to take further action in the matter. The reason for rejecting the petitioner's request, for release of the bank guarantee for Rs.4.40 lakhs, was their failure to adhere to the provisions contained in the A.P. Indian Liquor and Foreign Liquor Rules, 1970 and the A.P. Through Transport Permit Rules.

The Government, in its order in G.O.Rt. No. 2249 dated 09.12.1997, dismissed the revision filed against the order of the Commissioner of Prohibition and Excise dated 23.06.1995. In his

order dated 23.06.1995, the Commissioner took note of the fact that the through transport permit was issued to the petitioner on 15.03.1995 which was valid upto 08.04.1995, that the consignment had entered the State of Andhra Pradesh at Palamaneru and had thereafter passed through the Prohibition and Excise stations at Tirupathi, Ongole, Eluru and Vizag for verification before reaching the exit point and, even after expiry of the validity period of the through transport permit, the driver had neither reported to any Excise officer nor had he revalidated the through transport permit and had instead proceeded towards the destination and had finally reached Purushothapuram on 23.04.1995 without reporting at the intermediary points at Tirupathi, Ongole, Eluru and Vizag. The Commissioner held that the A.P. Through Transport Permit Rules were violated and the petitioner had permitted the consignment to move to the exit point even after expiry of the validity period of the permit and, therefore, the vehicle was seized along with the consignment, it was detained at Purushothapuram check post and was then handed over to the Prohibition and Excise Superintendent having jurisdiction for registering the case under the appropriate provisions of law. The Commissioner also rejected the petitioner's request for extension of the validity period of the through transport permit. It is necessary to note that the petitioner's request was for revalidation of his through transport permit and for return of the bank guarantee. The order of the Commissioner of Prohibition and Excise and that of the Government rejecting the petitioner's request in this regard contain adequate reasons to reflect proper application of mind. It is well settled that such orders need not be as elaborate as judicial pronouncements of Courts of law and it would suffice if the order reflects application of mind to the facts in issue and to the relevant statutory provisions. The petitioner's contention that the impugned

order is bereft of reasons must, therefore, be rejected.

Sri M.Rama Rao, learned counsel for the petitioner, would contend that the writ petition has become infructuous since the vehicle along with the consignment has already been released. I am afraid I cannot agree. The vehicle was released, along with the contents, on a bank guarantee having been furnished by the petitioner herein and it is open for the respondents to continue and complete the confiscation proceedings, in accordance with law and, if need be, invoke the bank guarantee.

The Writ Petition fails and is, accordingly ,dismissed. However, in the circumstances, without costs.

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19-09-2007

mrkr/usd

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[1] 2002(6) ALD 163 (FB)